# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	02-34
	)	
vs.	)	
	)	
TIMMIE COLE AND BERT	)	ORDER
HOWARD CLARK	)	
	)	
Defendants.	)	

Defendant is charged with possession of more than 50 grams of crack cocaine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A), and 18 U.S.C. § 2. On January 13, 2003, defendant filed a motion to suppress evidence obtained during the search of the residence located at 1112 ½ Kirkwood Boulevard, Davenport, Iowa. The government resisted on January 16, 2003, and a hearing was held on February 11, 2003. The matter is now fully submitted.

### I. BACKGROUND

On January 31, 2002, Davenport Police Officer, Jeffery Bladel ("Bladel"), applied for a warrant to search the residence located at 1112 ½ Kirkwood Boulevard in Davenport, Iowa. In the warrant application, Bladel stated that a confidential source had conducted a controlled purchase of cocaine from defendant at the residence within the past forty-eight hours, and that the confidential source reported seeing large quantities of drugs within the residence. Bladel also stated that during the

surveillance of the residence, officers saw foot traffic and vehicle traffic coming and going from the residence, which he believed was indicative of drug trafficking.

A judge for the Seventh Judicial District of Iowa issued a search warrant. Shortly thereafter,

Davenport police officers conducted a search of the residence. They found and seized numerous items
related to drug activity.

At the February 11<sup>th</sup> hearing, Bladel testified that Michael Henderson and Kristina Harrington lease the residence at 1112 ½ Kirkwood Boulevard. Defendant testified that he went to the residence to see his girlfriend, Keisha Harrington.<sup>1</sup> He admitted that neither he nor his girlfriend lived at the residence,<sup>2</sup> and that he did not plan to spend the night at the residence. Defendant further testified that he planned to stay at the residence for only a few hours.

#### II. APPLICABLE LAW AND DISCUSSION

## A. Defendant's Expectation of Privacy

Defendant argues that the search of the residence violated his Fourth Amendment rights, because Bladel allegedly lied and omitted critical information in the search warrant application. In order to succeed on his Fourth Amendment claim, defendant must first "demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable . . . ." *Minnesota* 

<sup>&</sup>lt;sup>1</sup> According to defendant, he may have fathered at least one of the children present at the residence. Nothing in the record suggests that defendant went to the residence for the purpose of visiting a child.

<sup>&</sup>lt;sup>2</sup> At the detention hearing on July 16, 2002, it was suggested that defendant resided in Chicago, Illinois. Evidence linking defendant to Chicago was also discovered during the search at 1112 ½ Kirkwood Boulevard.

v. Carter, 525 U.S. 83, 88 (1998).

In *Carter*, the Supreme Court "held that defendants visiting another's apartment for a short time to package cocaine had no legitimate expectation of privacy in that apartment . . . ." *United States v. Sturgis*, 238 F.3d 956, 958 (8<sup>th</sup> Cir. 2001). In reaching its conclusion, the "Court differentiated between an overnight visitor who has a rightful expectation of privacy, and another sort of visitor who, being 'simply permitted on the premises,' would lack a reasonable expectation of privacy." *United States v. Reyes*, 2002 WL 356707, \*4 (D. Maine 2002) (quoting *Carter*, 525 U.S. at 91). In analyzing *Carter*, the Eighth Circuit stated that "a visitor usually lacks a rightful expectation of privacy when present in the home of another–unless the visitor stays overnight." *Sturgis*, 238 F.3d at 958 (citing *Minnesota v. Carter*, 525 U.S. 83, 89-91).

Defendant admitted that he did not live at the residence searched; that his girlfriend did not live there; and that he only intended to visit the residence for a short while. Officer Bladel testified that officers surveilled the residence for three-and-a-half hours and observed heavy foot and vehicle traffic, which Bladed believed was indicative of drug trafficking. Bladel's suspicion was confirmed when the confidential source entered the residence, completed a controlled purchase of cocaine from defendant, and observed large quantities of drugs in the residence. The Court finds that, taken as a whole, this evidence strongly suggests that defendant's purpose in the residence was commercial—to distribute cocaine. Consequently, the Court finds that defendant had no reasonable expectation of privacy in the residence. *See Minnesota v. Carter*, 525 U.S. 83, 88 (1998); and *United States v. Sturgis*, 238 F.3d 956, 958 (8<sup>th</sup> Cir. 2001) (a defendant visiting another's motel room for the purpose of distributing drugs lacked a legitimate expectation of privacy in the motel room). Because defendant did not have a

reasonable expectation of privacy in the residence, his Fourth Amendment challenge is without merit.

#### B. Franks Violation

Even if the Court found that defendant had a reasonable expectation of privacy in the residence, it would deny defendant's motion to suppress. To be entitled to a *Franks* hearing, the defendant must show that the affiant was purposely untruthful with regard to a material fact in an application for the warrant, or acted with reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978). If the test is satisfied, and if the alleged false statement or omission was necessary to the finding of probable cause, then the defendant is entitled to a hearing. *Id.* To prevail at the hearing, defendant must show that probable cause would have been lacking if the affiant had not included the false statement in, or omitted information from, the warrant application. *Id.* 

In his motion to suppress, defendant alleged that Bladel lied in the search warrant application by indicating that his confidential source had not given false information in the past. The Court allowed defendant to make an offer of proof on the *Franks* issue at the February 11<sup>th</sup> hearing. Bladel testified that his confidential source was Jamie Hollingshed ("Hollingshed"). However, he offered no testimony suggesting that Hollingshed had ever provided the police department with false evidence. Defendant next called Officer McAuliffe to the stand. Mr. McAuliffe testified that someone once informed the Davenport Police Department that a "J. Fresh" sold drugs. Officers believed that "J. Fresh" was Jamie Hollingshed's nickname, so they confronted him about selling drugs. Hollingshed denied involvement in any illicit drug activity. The officers then conducted a photo line-up and asked the informant to identify "J. Fresh." The informant selected someone other than Hollingshed. After that episode, Officer

McAuliffe testified that he believed Hollingshed and had no concerns about his veracity.

The Court finds that the conclusory statements made by defendant in his motion to suppress are unsupported by the evidence introduced at the February 11<sup>th</sup> hearing. The search warrant application did not contain false information, and no critical omissions were made. The Court further finds that facts contained in the search warrant application established probable cause. Therefore, even if defendant had a reasonable expectation of privacy in the searched residence, his motion to suppress is denied.

C. Trial Date

The trial, originally scheduled on February 24, 2003, will now begin in Davenport, Iowa on February 25, 2003 at 9:00 a.m. Counsel shall report to chambers on that date at 8:30 a.m.

## III. CONCLUSION

Defendant's motion to suppress is denied. The trial in this matter will commence on February 25, 2003.

IT IS SO ORDERED.

This 13<sup>th</sup> day of February, 2003.

Inited States District Court